



Thursday, March 4, 2004

**Bill Text - A09897**

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SAME AS S06263

INTRODUCED BY SEN. PADAVAN

read twice and ordered  
printed, to be committed  
to Committee on Cities.

STATE OF NEW YORK

9897

IN ASSEMBLY

March 1, 2004

Introduced by M. of A. GIANARIS -- read once and referred to the Committee on Cities

AN ACT to enact the "wireless facility siting act"; to establish a one hundred twenty day moratorium upon the construction of wireless facilities in cities having a population of one million or more; to amend the general municipal law, in relation to the placement, construction and modification of wireless services facilities in certain municipalities; to direct the department of health to study, evaluate and make recommendations on the health effects of radio frequency signals and microwave energy emitted by wireless communications service facilities and wireless communications devices; and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. In 1996, the United States Congress  
2 adopted the Telecommunications Act of 1996 which addresses, in part, the  
3 siting of wireless services facilities and the authority of state and  
4 local governments to regulate the placement, construction and modifica-  
5 tion of such facilities. While municipal control over the siting of  
6 wireless services facilities is an important component of municipal home  
7 rule in the state of New York, the legislature nevertheless recognizes  
8 the similarly important federal, state and local interests of providing  
9 for wireless services to the public in a manner that addresses state and  
10 local concerns. As such, the legislature has identified the need to  
11 balance federal interests with local concerns by providing for an appro-  
12 priate and efficient process of municipal review for applications to  
13 site, construct and modify wireless services facilities. It is the  
14 intent of the legislature in adopting the "wireless facility siting act"  
15 to implement enabling legislation which specifically sets forth a  
16 uniform statewide process for municipal review of applications for the  
17 placement, construction and modification of wireless services facilities  
18 in cities having a population of one million or more.  
19 S 2. Short title. This act shall be known as and may be cited as the  
20 "wireless facility siting act".

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets

{ } is old law to be omitted.

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1 S 3. Moratorium upon the construction of wireless facilities. 1.  
2 Notwithstanding any provision of law to the contrary, and in accordance  
3 with the federal Telecommunications Act of 1996, there is hereby estab-  
4 lished a moratorium upon the construction of wireless facilities in  
5 cities having a population of one million or more. During the period  
6 this section is in effect, no wireless facility shall be constructed or  
7 commence operation in any such city in this state. The purpose of such  
8 moratorium shall be to afford such cities time to review and enact land  
9 use laws, ordinances, rules and regulations relating to the placement,  
10 construction and modification of wireless facilities in a manner that  
11 addresses local concerns and provides the public with access to wireless  
12 communications services pursuant to article 13-E of the general municipi-  
13 pal law.

14 2. For the purposes of this section, the term:

15 (a) "Ancillary equipment" means all equipment necessary for the secure  
16 and successful operation of a wireless facility including but not limit-  
17 ed to, support structures, antennas, transmitting, receiving and combin-  
18 ing equipment, equipment shelters, transmission cables, and backup power  
19 sources.

20 (b) "Wireless communications service" means all commercial mobile  
21 services, as that term is defined in section 332(d) of title 47, United  
22 States Code, as amended from time to time, including, but not limited  
23 to, all broadband personal communications services, wireless radio tele-  
24 phone services, geographic area specialized and enhanced specialized  
25 mobile radio services, and incumbent-wide area specialized mobile radio  
26 licensees, which offer real time, two-way voice or data service that is  
27 interconnected with the public switched telephone network or otherwise  
28 provides access to communications services.

29 (c) "Wireless facility" means any unmanned facility used in connection  
30 with the provision of wireless communications service including, but not  
31 limited to, antennas, ancillary equipment and telecommunications towers.

32 S 4. The general municipal law is amended by adding a new article 13-E  
33 to read as follows:

34 ARTICLE 13-E

35 WIRELESS FACILITY SITING ACT

36 SECTION 300. DEFINITIONS.

37 301. PERMIT REQUIREMENTS.

38 302. PROCEDURE FOR MUNICIPAL REVIEW OF PERMIT REQUESTS.

39 303. STANDARDS FOR REVIEW AND APPLICATION REQUIREMENTS FOR A  
40 WIRELESS FACILITY.

41 304. CO-LOCATION STANDARDS.

42 305. PERMIT APPROVAL; NON-CONFORMING FACILITIES.

43 306. APPLICABILITY.

44 S 300. DEFINITIONS. WHERE USED IN THIS ARTICLE, THE FOLLOWING WORDS  
45 AND PHRASES SHALL HAVE THE MEANINGS SET FORTH IN THIS SECTION UNLESS THE  
46 CONTEXT CLEARLY INDICATES OTHERWISE:

47 1. "MUNICIPALITY" MEANS A CITY HAVING A POPULATION OF ONE MILLION OR  
48 MORE.

49 2. "MUNICIPAL BOARD" MEANS THE DULY CREATED BOARD OF A MUNICIPALITY  
50 AUTHORIZED BY THE MUNICIPALITY TO REVIEW APPLICATIONS FOR WIRELESS  
51 FACILITIES. IN THE EVENT A MUNICIPALITY DOES NOT DESIGNATE A BOARD,  
52 REFERENCES IN THIS ARTICLE TO THE MUNICIPAL BOARD SHALL BE DEEMED TO  
53 REFER TO THE LEGISLATIVE BODY OF SUCH MUNICIPALITY.

54 3. "BUILDING INSPECTOR" MEANS THE MUNICIPAL OFFICIAL CHARGED WITH  
55 ISSUING BUILDING PERMITS AND/OR ENFORCING THE MUNICIPAL ZONING LAW OF A

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1 MUNICIPALITY OR OTHER INDIVIDUAL DESIGNATED BY THE LEGISLATIVE BODY TO  
2 ISSUE PERMITS FOR WIRELESS FACILITIES.

3 4. "MUNICIPAL ZONING LAW" MEANS A MUNICIPALITY'S DULY ENACTED ZONING  
4 LAW OR ORDINANCE.

5 5. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, LIMITED LIABILITY  
6 COMPANY, JOINT VENTURE, PUBLIC BENEFIT CORPORATION, PARTNERSHIP, LIMITED  
7 LIABILITY PARTNERSHIP, ASSOCIATION, TRUST OR ESTATE, AND ANY OTHER ENTI-  
8 TY, PUBLIC OR PRIVATE, HOWEVER ORGANIZED.

9 6. "WIRELESS SERVICES" MEANS THE PROVISION OF WIRELESS SERVICES,  
10 INCLUDING BUT NOT LIMITED TO THE PROVISION OF COMMERCIAL MOBILE RADIO  
11 SERVICES ("CMRS") SUCH AS CELLULAR SERVICE, PERSONAL COMMUNICATIONS  
12 SERVICE OR SPECIALIZED MOBILE RADIO SERVICES; UNLICENSED WIRELESS  
13 SERVICES; OR COMMON CARRIER EXCHANGE ACCESS SERVICES; WHICH SERVICES ARE  
14 REGULATED BY THE FEDERAL COMMUNICATIONS COMMISSION IN ACCORDANCE WITH  
15 SECTION 704 OF THE TELECOMMUNICATIONS ACT OF 1996, AS AMENDED.

16 7. "WIRELESS FACILITY" MEANS ANY UNMANNED FACILITY USED IN CONNECTION  
17 WITH THE PROVISION OF WIRELESS SERVICES, INCLUDING BUT NOT LIMITED TO  
18 ANTENNAS, ANCILLARY TELECOMMUNICATIONS EQUIPMENT, TELECOMMUNICATIONS  
19 TOWERS AND ACCESS.

20 8. "TELECOMMUNICATIONS TOWER" MEANS ANY FREESTANDING TOWER, MONOPOLE  
21 OR SIMILAR STRUCTURE USED FOR THE PROVISION OF WIRELESS SERVICES INCLUD-  
22 ING ANCILLARY TELECOMMUNICATIONS EQUIPMENT REQUIRED TO INTEGRATE SUCH  
23 FACILITY INTO AN EXISTING OR PROPOSED WIRELESS NETWORK.

24 9. "PERMIT" MEANS THE AUTHORIZATION BY THE BUILDING INSPECTOR PURSUANT  
25 TO THIS ARTICLE TO CONSTRUCT A WIRELESS FACILITY.

26 10. "TECHNICALLY AND COMMERCIALY REASONABLE" MEANS IN ACCORDANCE WITH  
27 GENERAL INDUSTRY PRACTICE IN THE PROVISION OF WIRELESS SERVICES PERTAIN-  
28 ING TO COST AND SERVICE COVERAGE.

29 11. "TECHNICAL REVIEW" MEANS REVIEW OF A PERMIT APPLICATION BY AN  
30 INDEPENDENT EXPERT IN TELECOMMUNICATIONS SITING.

31 12. "ANCILLARY EQUIPMENT" MEANS ALL EQUIPMENT NECESSARY TO THE SECURE  
32 AND SUCCESSFUL OPERATION OF A WIRELESS FACILITY, INCLUDING, BUT NOT  
33 LIMITED TO: A SUPPORT STRUCTURE, ANTENNAS, TRANSMITTING, RECEIVING AND  
34 COMBINING EQUIPMENT, EQUIPMENT SHELTER, FENCING, TRANSMISSION CABLES,  
35 TELEPHONE LINES, UTILITY LINES, AND BACKUP POWER SOURCE.

36 13. "HISTORIC AREA" MEANS AN AREA WHOLLY OR PARTIALLY WITHIN, OR WIRE-  
37 LESS FACILITY HAVING ITS FOUNDATION WITHIN FIVE HUNDRED FEET OF, ANY  
38 HISTORIC BUILDING, STRUCTURE, FACILITY, SITE OR DISTRICT, OR PREHISTORIC  
39 SITE, THAT IS LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES, OR  
40 THAT HAS BEEN PROPOSED BY THE NEW YORK STATE BOARD ON HISTORIC PRESERVA-  
41 TION FOR A RECOMMENDATION TO THE STATE HISTORIC PRESERVATION OFFICER FOR  
42 NOMINATION FOR INCLUSION IN THE NATIONAL REGISTER, THAT IS LISTED ON THE  
43 STATE REGISTER OF HISTORIC PLACES, OR HAS BEEN DESIGNATED AS A HISTORIC  
44 PLACE OR LANDMARK BY THE MUNICIPALITY.

45 14. "SCENIC AREA" MEANS AN AREA WHOLLY OR PARTIALLY WITHIN, OR A WIRE-  
46 LESS FACILITY HAVING ITS FOUNDATION WITHIN FIVE HUNDRED FEET OF, ANY  
47 PUBLICLY OWNED OR OPERATED PARKLAND, RECREATION AREA OR DESIGNATED OPEN  
48 SPACE, INCLUDING ANY WIRELESS FACILITY HAVING ITS FOUNDATION WITHIN FIVE  
49 HUNDRED FEET OF THE CENTERLINE OF ANY SCENIC BYWAY AS DEFINED IN ARTICLE  
50 TWELVE-C OF THE HIGHWAY LAW OR AS DESIGNATED BY THE MUNICIPALITY.

51 15. "SITE CONSOLIDATOR" MEANS ANY INDIVIDUAL, CORPORATION (OR ANY  
52 SUBSIDIARY, DIVISION OR AFFILIATE THEREOF), LIMITED LIABILITY COMPANY,  
53 JOINT PARTNERSHIP, ASSOCIATION, TRUST OR ESTATE, AND ANY OTHER ENTITY,  
54 PUBLIC OR PRIVATE, HOWEVER ORGANIZED (OR ANY SUBSIDIARY, DIVISION OR  
55 AFFILIATE THEREOF) WHICH: (A) IS PRIMARILY OR PRINCIPALLY ENGAGED IN THE  
56 BUSINESS OF OWNING, LEASING, MANAGING OR OPERATING WIRELESS FACILITIES

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1 FOR ITSELF AND/OR OTHERS, REGARDLESS AS TO WHETHER OR NOT THE SITE  
2 CONSOLIDATOR IS A PROVIDER OF WIRELESS SERVICES; AND (B) CAN DEMONSTRATE  
3 THROUGH WRITTEN EVIDENCE A PROVEN ABILITY TO OPERATE AND MANAGE WIRELESS  
4 FACILITIES USED BY WIRELESS SERVICES PROVIDERS.

5 S 301. PERMIT REQUIREMENTS. NO PERSON, INCLUDING A SITE CONSOLIDATOR,  
6 SHALL COMMENCE THE CONSTRUCTION OR MODIFICATION OF A WIRELESS FACILITY  
7 WITHOUT FIRST HAVING OBTAINED A PERMIT FROM THE BUILDING INSPECTOR IN  
8 THE MUNICIPALITY IN WHICH SUCH WIRELESS FACILITY WILL BE LOCATED.

9 S 302. PROCEDURE FOR MUNICIPAL REVIEW OF PERMIT REQUESTS. 1.  
10 NOTWITHSTANDING ANY STATE OR LOCAL LAW TO THE CONTRARY, A MUNICIPALITY  
11 SHALL FOLLOW THE PROCEDURES SET FORTH IN THIS ARTICLE FOR THE REVIEW AND  
12 ISSUANCE OF A PERMIT FOR A WIRELESS FACILITY.

13 2. (A) UPON RECEIPT OF A COMPLETED APPLICATION FOR PERMISSION TO  
14 CONSTRUCT, PLACE OR MODIFY A WIRELESS FACILITY, THE MUNICIPAL BOARD  
15 SHALL DECIDE UPON THE APPLICATION AND RENDER A WRITTEN DECISION WITHIN  
16 THIRTY DAYS OF RECEIPT. ANY DENIAL OF SUCH APPLICATION SHALL BE  
17 SUPPORTED BY SUBSTANTIAL EVIDENCE. THE TIME WITHIN WHICH THE MUNICIPAL  
18 BOARD MUST RENDER ITS WRITTEN DECISION MAY BE EXTENDED BY MUTUAL CONSENT  
19 OF THE APPLICANT AND THE MUNICIPAL BOARD.

20 (B) UPON APPROVAL OF AN APPLICATION RECEIVED PURSUANT TO THIS SUBDIVI-  
21 SION, THE MUNICIPAL BOARD SHALL PROVIDE WRITTEN NOTICE OF SUCH APPROVAL  
22 TO THE BUILDING INSPECTOR. UPON RECEIPT OF SUCH NOTICE THE BUILDING  
23 INSPECTOR SHALL ISSUE A WRITTEN PERMIT AND FILE THE PERMIT WITH THE  
24 MUNICIPAL CLERK WITHIN TWENTY DAYS.

25 (C) EACH APPLICANT SHALL MAKE A GOOD FAITH EFFORT TO PROVIDE WRITTEN  
26 NOTICE TO ALL OWNERS AND RESIDENTS OF PROPERTY LOCATED WITHIN FIVE  
27 HUNDRED FEET OF THE PROPOSED WIRELESS FACILITY WITHIN TEN DAYS OF FILING  
28 AN APPLICATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. THE FAIL-  
29 URE OF A PROPERTY OWNER OR RESIDENT TO RECEIVE WRITTEN NOTICE SHALL NOT  
30 AFFECT THE VALIDITY OF THE APPLICATION OR APPROVAL.

31 3. (A) NO APPLICATION FEE IMPOSED BY A MUNICIPALITY UPON AN APPLICANT  
32 FOR THE PLACEMENT, CONSTRUCTION OR MODIFICATION OF A WIRELESS FACILITY  
33 SHALL EXCEED THE NORMAL AND CUSTOMARY FEE FOR A BUILDING PERMIT APPLICA-  
34 TION IN SUCH MUNICIPALITY.

35 (B) UPON REQUEST OF THE MUNICIPAL BOARD, AN APPLICANT MAY BE REQUIRED  
36 TO ESTABLISH AN ESCROW ACCOUNT FOR THE PAYMENT OF THE ACTUAL, REASONABLE  
37 AND CUSTOMARY COSTS INCURRED BY THE MUNICIPALITY FOR ONE INDEPENDENT  
38 TECHNICAL REVIEW OF EACH ASPECT OF THE APPLICATION; PROVIDED, HOWEVER,  
39 IN NO EVENT SHALL THE TOTAL OF SUCH COSTS EXCEED THE GREATER OF FIVE  
40 THOUSAND DOLLARS OR TWO AND ONE-HALF PERCENT OF THE TOTAL PROJECT COST  
41 EXCLUSIVE OF REAL ESTATE AS SET FORTH IN THE APPLICATION; AND PROVIDED  
42 FURTHER THAT THE APPLICANT SHALL NOT BE REQUIRED TO PAY FOR MORE THAN  
43 ONE REVIEW OF ANY ASPECT OF THE APPLICATION.

44 S 303. STANDARDS FOR REVIEW AND APPLICATION REQUIREMENTS FOR A WIRE-  
45 LESS FACILITY. 1. PERMIT APPROVAL SHALL BE GRANTED IF THE APPLICANT  
46 DEMONSTRATES COMPLIANCE WITH THE FOLLOWING SUBSTANTIVE STANDARDS FOR THE  
47 REVIEW, PAYS ALL APPLICABLE FEES AND COSTS DUE AND OWING TO THE MUNICI-  
48 PALITY, AND SUBMITS THE REQUIRED DOCUMENTS.

49 2. (A) THE APPLICATION SHALL INCLUDE WRITTEN DOCUMENTATION, WHICH MAY  
50 INCLUDE A MAP, THAT SHOWS THE LOCATION OF ALL THE APPLICANT'S EXISTING  
51 WIRELESS FACILITIES TOGETHER WITH ALL FACILITIES FOR WHICH AN APPLICA-  
52 TION HAS BEEN FILED BY THE APPLICANT WITHIN THE COUNTY WITHIN WHICH SUCH  
53 FACILITIES ARE TO BE LOCATED AND A ONE-HALF MILE AREA OUTSIDE OF THE  
54 BOUNDARIES OF THE SUCH COUNTY.

55 (B) THE APPLICATION SHALL CONTAIN SUBMISSION OF WRITTEN DOCUMENTATION  
56 ESTABLISHING THAT THERE EXISTS A SPECIFIC NEED FOR THE PROPOSED WIRELESS

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1 FACILITY INCLUDING, BUT NOT LIMITED TO, EVIDENCE THAT THE EXISTING WIRE-  
2 LESS FACILITIES DO NOT PROVIDE ADEQUATE COVERAGE AND DO NOT HAVE THE  
3 VIABILITY TO PROVIDE ADEQUATE COVERAGE BY ADJUSTING THE FACILITIES AT  
4 EXISTING SITES.

5 (C) THE INFORMATION SUBMITTED PURSUANT TO THIS SUBDIVISION SHALL BE  
6 DEEMED PROPRIETARY AND CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER  
7 ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW.

8 3. THE APPLICATION SHALL CONTAIN PROOF THAT OPERATION OF THE WIRELESS



9 FACILITY COMPLIES WITH ANY APPLICABLE REGULATIONS PROMULGATED BY THE  
10 FEDERAL COMMUNICATIONS COMMISSION, INCLUDING REGULATIONS REGARDING RADI-  
11 O-FREQUENCY EMISSIONS. IF NEW, MORE RESTRICTIVE STANDARDS ARE ADOPTED  
12 BY THE FEDERAL COMMUNICATIONS COMMISSION, THE FACILITY SHALL, IN A  
13 MANNER CONSISTENT WITH SUCH STANDARDS, BE BROUGHT INTO COMPLIANCE, OR  
14 CONTINUED OPERATIONS MAY BE RESTRICTED BY THE MUNICIPALITY.

15 4. THE WIRELESS FACILITY SHALL BE DESIGNED AND FINISHED IN A MANNER  
16 WHICH MINIMIZES THE VISUAL IMPACT ON SURROUNDING PROPERTIES IN ACCORD-  
17 ANCE WITH GENERALLY ACCEPTED PRACTICES AND AT A REASONABLE COST, WHILE  
18 PROVIDING THE LEVEL OF SERVICE REQUIRED BY THE APPLICANT. MINIMIZATION  
19 OF VISUAL IMPACT IN AN HISTORIC OR SCENIC AREA SHALL INCLUDE REASONABLE  
20 EFFORTS THAT TAKE INTO ACCOUNT THE SURROUNDINGS OF THE WIRELESS FACILITY  
21 THAT ARE THE BASIS FOR DESIGNATION AS AN HISTORIC OR SCENIC AREA AND  
22 SHALL BE FINISHED IN A MANNER WHICH MINIMIZES THE VISUAL IMPACT ON  
23 SURROUNDING PROPERTIES IN ACCORDANCE WITH GENERALLY ACCEPTED PRACTICES  
24 AND AT A REASONABLE COST, WHILE PROVIDING THE LEVEL OF SERVICE REQUIRED  
25 BY THE APPLICANT.

26 5. A WIRELESS FACILITY SHALL NOT EXCEED A HEIGHT OF SEVEN FEET IN ANY  
27 RESIDENTIAL ZONE.

28 NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF SECTION THREE  
29 HUNDRED FIVE OF THIS ARTICLE, NOTHING CONTAINED IN THIS SUBDIVISION  
30 SHALL PROHIBIT A MUNICIPALITY FROM PERMITTING A GREATER HEIGHT IN ANY  
31 SUCH ZONE FOR THE PURPOSES OF ACCOMMODATING CO-LOCATION OR A MUNICIPAL  
32 OR STATE WIRELESS SYSTEM. WHERE A NEW ANTENNA FACILITY IS PROPOSED WHICH  
33 IS BEING BUILT AS A REPLACEMENT FOR AN EXISTING ANTENNA FACILITY, SO  
34 LONG AS THE PROPOSED ANTENNA FACILITY IS OF SUBSTANTIALLY SIMILAR  
35 CONSTRUCTION TYPE AND NO TALLER THAN THE EXISTING ANTENNA FACILITY, THE  
36 PROPOSED ANTENNA FACILITY SHALL BE DEEMED TO MEET THE CRITERIA SET FORTH  
37 IN THIS SECTION EVEN IF THE PROPOSED ANTENNA FACILITY EXCEEDS THE OTHER-  
38 WISE APPLICABLE HEIGHT LIMITATIONS CONTAINED IN THIS SECTION.

39 6. THE WIRELESS FACILITY SHALL BE DESIGNED, CONSTRUCTED, MAINTAINED  
40 AND OPERATED IN A MANNER THAT ENSURES THE SECURITY OF THE FACILITY AND  
41 PROTECTS AGAINST UNAUTHORIZED ACCESS IN ACCORDANCE WITH ACCEPTED INDUS-  
42 TRY PRACTICES.

43 7. WIRELESS FACILITIES SHALL NOT BE ILLUMINATED BY ARTIFICIAL MEANS  
44 AND SHALL NOT DISPLAY OBSTRUCTION MARKING AND/OR LIGHTING UNLESS SUCH  
45 MARKING AND/OR LIGHTING IS SPECIFICALLY REQUIRED BY THE FEDERAL AVIATION  
46 ADMINISTRATION OR OTHER FEDERAL OR STATE AUTHORITY FOR A PARTICULAR  
47 WIRELESS FACILITY; PROVIDED, HOWEVER, WHEN INCORPORATED INTO THE DESIGN,  
48 LIGHT FIXTURES USED TO ILLUMINATE BALL FIELDS, PARKING LOTS, OR OTHER  
49 GROUND AREAS OR GROUND STRUCTURES MAY BE ATTACHED TO A WIRELESS FACILI-  
50 TIES.

51 8. THE APPLICANT SHALL PRESERVE EXISTING ON-SITE VEGETATION TO THE  
52 MAXIMUM EXTENT PRACTICABLE. TO THE EXTENT REASONABLY PRACTICABLE, THE  
53 BASE OF THE FACILITY AND ANY ACCESSORY STRUCTURES SHALL BE LANDSCAPED.

54 9. (A) ANY CONTRACT WITH AN OWNER OF PROPERTY UPON WHICH A WIRELESS  
55 FACILITY IS TO BE PLACED, CONSTRUCTED OR MODIFIED SHALL INCLUDE A  
56 PROVISION REQUIRING THE OWNER OF THE WIRELESS FACILITY TO REMOVE SUCH

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1 FACILITY IN THE EVENT THE FACILITY HAS NOT BEEN IN USE FOR A PERIOD OF  
2 AT LEAST TWELVE MONTHS. THE TERMS OF SUCH PROVISION SHALL BE FILED WITH  
3 THE MUNICIPAL BOARD WHERE THE PROPOSED WIRELESS FACILITY IS TO BE  
4 LOCATED. THE PERMIT MAY BE REVOKED UPON A FINDING THAT THE REQUIRED  
5 CONTRACT LANGUAGE HAS BEEN REMOVED.

6 (B) THE MUNICIPAL BOARD MAY REQUIRE THAT, IN THE EVENT THE WIRELESS  
7 FACILITY IS NOT USED BY THE APPLICANT, OTHER CO-LOCATORS, THEIR SUCCE-  
8 SORS AND/OR ASSIGNS FOR A PERIOD OF ONE YEAR OR MORE, SUCH FACILITY  
9 SHALL BE REMOVED BY ITS THEN-CURRENT OWNER. IN THE EVENT THE WIRELESS  
10 FACILITY IS NOT SO REMOVED, THE MUNICIPAL CLERK SHALL GIVE WRITTEN  
11 NOTICE TO THE OWNER OF SUCH FACILITY (I) STATING THAT THE WIRELESS  
12 FACILITY IS CONSIDERED ABANDONED, AND (II) SETTING A TIME, DATE AND

13 PLACE FOR A PUBLIC HEARING BEFORE THE MUNICIPAL BOARD ON THE MATTER.  
14 SUCH PUBLIC HEARING SHALL BE ON NOT LESS THAN TWENTY DAYS NOTICE TO SUCH  
15 OWNER, AND SHALL BE PUBLISHED IN A NEWSPAPER HAVING GENERAL CIRCULATION  
16 IN THE MUNICIPALITY. UPON A FINDING THAT THE WIRELESS FACILITY HAS BEEN  
17 ABANDONED, THE MUNICIPAL BOARD SHALL DELIVER WRITTEN NOTICE TO THE  
18 APPLICANT INDICATING THE REASONS FOR ITS FINDING, AND DIRECTING THAT THE  
19 WIRELESS FACILITY BE REMOVED WITHIN SIXTY DAYS, WEATHER PERMITTING. IN  
20 THE EVENT THAT THE WIRELESS FACILITY IS NOT SO REMOVED, THE MUNICIPALITY  
21 MAY COMMENCE AN ACTION IN SUPREME COURT AGAINST THE OWNER OF SUCH FACIL-  
22 ITY SEEKING AN ORDER REQUIRING THE REMOVAL. THE PREVAILING PARTY IN  
23 SUCH ENFORCEMENT ACTION SHALL BE ENTITLED TO RECOVER FROM THE OTHER  
24 REASONABLE ATTORNEYS FEES, AS DETERMINED BY THE COURT.

25 (C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS  
26 SUBDIVISION, A MUNICIPALITY MAY ADOPT A LOCAL LAW TO REQUIRE THE POSTING  
27 OF A BOND OR OTHER SECURITY IN ORDER TO FINANCE DISMANTLING OF AN ABAN-  
28 DONED WIRELESS FACILITY; PROVIDED, HOWEVER, THE AMOUNT OF ANY SUCH BOND  
29 MAY NOT EXCEED THE ACTUAL AND REASONABLE COSTS OF DISMANTLING SUCH  
30 FACILITY AS SET FORTH IN THE APPLICATION.

31 10. WHERE THE APPLICANT FOR A WIRELESS FACILITY IS A SITE CONSOLIDA-  
32 TOR, SUCH APPLICATION SHALL ALSO INCLUDE A SWORN AFFIDAVIT OF THE APPLI-  
33 CANT STATING THAT THE APPLICANT HAS OBTAINED CONTRACTUAL COMMITMENTS  
34 FROM AT LEAST TWO SITE USERS WHICH FALL WITHIN ANY OF THE FOLLOWING  
35 CLASSES OF ENTITIES: (A) WIRELESS SERVICE PROVIDERS (HEREINAFTER  
36 REFERRED TO IN THIS ARTICLE AS "FEDERAL COMMUNICATIONS COMMISSION LICEN-  
37 SEES"), (B) PUBLIC SAFETY OR OTHER GOVERNMENTAL AGENCIES, OR (C) OTHER  
38 LICENSEES CATEGORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION AS  
39 COMMERCIAL MOBILE RADIO SERVICE PROVIDERS OR PRIVATE LAND MOBILE OPERA-  
40 TORS, AND WHICH SITE USERS HAVE COMMITTED TO PLACING THEIR WIRELESS  
41 SERVICES EQUIPMENT ON THE PROPOSED WIRELESS FACILITY IF SUCH WIRELESS  
42 FACILITY IS CONSTRUCTED. THE CONTRACTUAL COMMITMENTS REFERRED TO IN THE  
43 SWORN AFFIDAVIT MAY BE CONTINGENT UPON THE APPLICANT RECEIVING ALL  
44 NECESSARY PERMITS AND APPROVALS FOR, AND ACTUAL ERECTION OF THE PROPOSED  
45 WIRELESS FACILITY.

46 S 304. CO-LOCATION STANDARDS. 1. WHERE AN APPLICATION PROPOSES  
47 CONSTRUCTION OF A WIRELESS FACILITY DESIGNED TO SUPPORT ONLY ONE PROVID-  
48 ER, THE APPLICANT SHALL DEMONSTRATE THAT CO-LOCATING WITH ANOTHER WIRE-  
49 LESS FACILITY INSTEAD OF CONSTRUCTION OF THE PROPOSED WIRELESS FACILITY  
50 IS NOT TECHNICALLY AND COMMERCIALY REASONABLE.

51 2. THE MUNICIPAL BOARD MAY, IN ITS SOLE DISCRETION, REQUIRE THE APPLI-  
52 CANT FOR A WIRELESS FACILITY TO MAKE A REASONABLE ATTEMPT TO CO-LOCATE  
53 WITH ANOTHER WIRELESS FACILITY PROVIDED THE MUNICIPAL BOARD NOTIFIES THE  
54 APPLICANT IN WRITING, WITHIN FIFTEEN DAYS OF THE FILING OF THE APPLICA-  
55 TION, OF THE LOCATION OF ANY EXISTING WIRELESS FACILITY, UPON WHICH THE  
56 MUNICIPAL BOARD BELIEVES THE APPLICANT CAN SUCCESSFULLY CO-LOCATE A

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1 WIRELESS FACILITY THAT WILL ADEQUATELY SERVE THE TECHNICAL AND COMMER-  
2 CIAL REQUIREMENTS OF THE APPLICANT.

3 3. IF THE MUNICIPAL BOARD REQUIRES THE APPLICANT TO ATTEMPT TO CO-LO-  
4 CATE A WIRELESS FACILITY WITH AN EXISTING WIRELESS FACILITY, THE APPLI-  
5 CANT SHALL PROVIDE THE MUNICIPAL BOARD WITH A STATEMENT INDICATING THAT  
6 THE APPLICANT HAS EITHER:

7 (A) SUCCESSFULLY AGREED TO CO-LOCATE THE WIRELESS FACILITY WITH AN  
8 EXISTING WIRELESS FACILITY, AND WHICH STATEMENT IDENTIFIES THE LOCATION  
9 OF THE FACILITY ON WHICH THE APPLICANT WILL BE CO-LOCATED; OR

10 (B) UNSUCCESSFULLY ATTEMPTED TO CO-LOCATE THE WIRELESS FACILITY WITH  
11 AN EXISTING WIRELESS FACILITY AND WHICH STATEMENT IDENTIFIES THE  
12 LOCATION OF THE FACILITIES WHICH THE APPLICANT ATTEMPTED TO CO-LOCATE ON  
13 WIRELESS FACILITIES WHICH THE APPLICANT HAS REVIEWED, AND LISTS THE  
14 REASONS WHY EACH SUCH ATTEMPT TO CO-LOCATE A WIRELESS FACILITY WAS  
15 UNSUCCESSFUL.

16 S 305. PERMIT APPROVAL; NON-CONFORMING FACILITIES. 1. UPON FINDING

17 THAT A PROPOSED WIRELESS FACILITY COMPLIES WITH THE PROVISIONS OF  
18 SECTIONS THREE HUNDRED THREE AND THREE HUNDRED FOUR OF THIS ARTICLE, THE  
19 MUNICIPAL BOARD SHALL ISSUE APPROVAL AND TRANSMIT A WRITTEN COPY OF ITS  
20 APPROVAL TO THE BUILDING INSPECTOR IN ACCORDANCE WITH SUBDIVISION TWO OF  
21 SECTION THREE HUNDRED TWO OF THIS ARTICLE. APPEALS FROM MUNICIPAL BOARD  
22 ACTIONS PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL BE GOVERNED BY  
23 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

24 2. (A) WHERE THE WIRELESS FACILITY DOES NOT MEET THE SPECIFICATIONS  
25 OUTLINED IN THIS ARTICLE, THE MUNICIPAL BOARD SHALL NOT ISSUE THE PERMIT  
26 PURSUANT TO THE ARTICLE.

27 (B) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVI-  
28 SION, UPON A SHOWING THAT CONSTRUCTION OF A WIRELESS FACILITY MEETING  
29 THE REQUIREMENTS OF THIS ARTICLE IS NOT TECHNICALLY AND COMMERCIALY  
30 REASONABLE, APPLICATION MAY BE MADE PURSUANT TO THE PROVISIONS OF ANY  
31 MUNICIPAL ZONING LAW OR OTHER LOCAL LAW, ORDINANCE, RULE OR REGULATION  
32 ADOPTED PURSUANT TO THE PROVISIONS OF ARTICLE FIVE-A OF THE GENERAL CITY  
33 LAW, THE STATUTE OF LOCAL GOVERNMENTS OR MUNICIPAL HOME RULE LAW GOVERN-  
34 ING THE PLACEMENT, CONSTRUCTION OR MODIFICATION OF WIRELESS FACILITIES;  
35 PROVIDED, HOWEVER THAT AN AREA OR USE VARIANCE SHALL BE GRANTED FOR A  
36 WIRELESS FACILITY UPON A SHOWING THAT:

37 (I) THE WIRELESS FACILITY IS A PUBLIC NECESSITY IN THAT IT IS REQUIRED  
38 TO RENDER THE SAFE AND ADEQUATE LEVEL OF SERVICE REQUIRED BY THE APPLI-  
39 CANT; AND

40 (II) THE PLACEMENT, CONSTRUCTION OR MODIFICATION OF THE WIRELESS  
41 FACILITY IS NECESSARY IN ORDER FOR THE APPLICANT TO RENDER THE REQUIRED  
42 LEVEL OF SERVICE IN A MANNER THAT IS TECHNICALLY AND COMMERCIALY  
43 REASONABLE.

44 S 306. APPLICABILITY. 1. THE PROVISIONS OF THIS ARTICLE SHALL GOVERN  
45 THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF ALL WIRELESS FACILITIES  
46 IN A MUNICIPALITY; PROVIDED, HOWEVER, THIS ARTICLE SHALL NOT APPLY TO  
47 ANY WIRELESS FACILITY PLACED, CONSTRUCTED OR MODIFIED PURSUANT TO A  
48 MASTER PERMIT WITH ANY AGENCY OR AUTHORITY OF THE STATE OF NEW YORK  
49 ENTERED INTO ON OR BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, AND ANY  
50 FUTURE SITE PERMITS ISSUED PURSUANT TO ANY SUCH MASTER PERMIT.

51 2. ISSUANCE OF A PERMIT PURSUANT TO THIS ARTICLE SHALL SATISFY AND BE  
52 IN LIEU OF ANY CERTIFICATIONS, APPROVALS OR OTHER REQUIREMENTS CONCERN-  
53 ING THE CONSTRUCTION OF A WIRELESS FACILITY INCLUDING, BUT NOT LIMITED  
54 TO, SUBDIVISION APPROVAL UNDER ANY STATE OR LOCAL LAW, ORDINANCE, RULE,  
55 REGULATION OR OTHER RESTRICTION, EXCEPT FOR THE REQUIREMENT TO DEMON-

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8

1 STRATE COMPLIANCE WITH THE NEW YORK STATE UNIFORM BUILDING AND FIRE  
2 PREVENTION CODE.

3 3. FOR THE PURPOSES OF THIS ARTICLE, AND IN COMPLIANCE WITH ARTICLE  
4 EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW AND ALL RULES AND REGU-  
5 LATIONS PROMULGATED THEREUNDER, WIRELESS FACILITIES SHALL BE CONSIDERED  
6 TYPE II ACTIONS CONSISTENT WITH THE RULES AND REGULATIONS RELATING TO  
7 SUCH DESIGNATIONS.

8 S 5. The department of health shall study, examine, evaluate and make  
9 recommendations concerning the health effects of exposure to the radio  
10 frequency signals and microwave energy emitted by wireless facilities,  
11 as defined in subdivision 2 of section three of this act, and wireless  
12 communications devices, as defined in section 301 of the county law.  
13 Such department shall report its findings, conclusions and recommenda-  
14 tions thereon to the governor and the legislature on or before the one  
15 hundred eightieth day after this act shall have become a law, and shall  
16 submit with its report such legislative proposals as it deems necessary  
17 to implement its recommendations.

18 S 6. Severability clause. If any clause, sentence, paragraph, subdivi-  
19 sion, section or part of this act shall be adjudged by any court of  
20 competent jurisdiction to be invalid, such judgment shall not affect,  
21 impair, or invalidate the remainder thereof, but shall be confined in

22 its operation to the clause, sentence, paragraph, subdivision, section  
23 or part thereof directly involved in the controversy in which such judg-  
24 ment shall have been rendered. It is hereby declared to be the intent  
25 of the legislature that this act would have been enacted even if such  
26 invalid provisions had not been included herein.

27 S 7. This act shall take effect immediately, provided that:

28 (a) section three of this act shall expire and be deemed repealed on  
29 the one hundred twentieth day after it shall have become a law; and

30 (b) section four of this act shall take effect on the one hundred  
31 twentieth day after it shall have become a law and shall apply to all  
32 applications for building permits for wireless facilities submitted on  
33 or after the effective date of such section.

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\*END\*

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Contact Webmaster